IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 351

DR. CARLOS MANUEL FALLA Y ALVAREZ,
Petitioner,

vs.

PAN AMERICAN LIFE INSURANCE COMPANY,
Respondent.

AMENDED REPLY BRIEF OF PETITIONER

Respondent's brief attempts to revise Petitioner's questions as being based on incorrect versions of the trial record. Petitioner replies that the record speaks for itself and Petitioner is correct. The Respondent quotes the language of the "Convenio monetario" paper excluding the signatory (App. 13). Only the insured signed this paper, as appears on its face. The required officer, as provided in the policy did not sign in behalf of the Company. Respondent cannot escape these facts, since the policy is also in the record. The trial court clearly refused to recognize or enforce the "convenio monetario" (App. 1-2). Since the trial court ruled in favor of Petitioner, he was therefore unwilling to assign error to the judgment in his favor.

Respondent bases his second question on an incorrect statement of the testimony of the insured, Plaintiff-Petitioner. The insured's testimony as to cash value of each of the policies involved is as follows:

> Q. "What are the cash values of each of these policies? Did you determine that?
> A. I calculated it several weeks back. Policy No. 254900, $995.00. Policy No. 324776, $3,114.00. Policy No. 387428, $14,346.00. Policy No. 414798, $619.00. Policy No. 636489, $7,347.00. Policy No. 441506, $8,500.00."

Counsel for Respondent did not object to this question, nor did he cross-examine the insured. This testimony as to cash value of the policies involved is a statement of fact. Respondent, in its second question, apparently is confused. The question states the insured's oral testimony was that it (policies involved) was payable in United States dollars. Respondent therefore contends that the insured-Petitioner testified that the policies are payable in dollars and not pesos. The question sets forth the insured's testimony as a legal conclusion. This Respondent's contention is incorrect. The Court of Appeals, in its opinion, adopted this same contention of Respondent (R 256).

Respondent's brief, page five paragraph two provides that the trial court found all six policies were payable in pesos. A review of the trial court's judgment clearly shows that this court did not rule that the policies were payable in pesos (App. 1-3). The trial court accepted the insured's uncontradicted testimony as to cash value of

the policies involved. The Court of Appeals reversed substituting its findings and judgment for that of the trial court. The law, as decided by the Supreme Court of the United States, in **Jaffke v. Dunham** (U.S. Ill. 1957, 77 S. Ct., 307, 352 U.S. 280, 1 L. Ed. 2nd 314) provides,

> "A party successful in the District Court shall sustain its judgment on appeal on any ground that finds support in the record."

See also **Daniels v. Allen** (U.S. N.C. 1953) 73 S. Ct. 827, 345 U.S. 946. There was competent evidence to sustain the judgment of the trial court in the record in this case, but the appellate court overlooked this evidence.

Counsel for Respondent in his brief further contends, and he probably believes, that "substantial justice" is done by the Court of Appeals opinion. The record reveals that premium payments were made in dollars and pesos interchangeably to the insurance company (R-208-209).

The Court of Appeals opinion therefore does considerable justice for the Respondent insurance company only. However, if the Court of Appeals opinion is to be affirmed, the insured receives less than twenty percent of his total investment premium payments, while the Respondent has utilized these funds advantageously over the past thirty years to its financial growth and benefit.

CONCLUSION

There is competent evidence to support the trial court's judgment. The Court of Appeals judgment should therefore be reversed.

Respectfully submitted,

s/ Samuel Sheradsky

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of Petitioner's Reply Brief was mailed to the attorneys for Respondent, JAMES A. DIXON, ESQUIRE, 900 Dade Federal Building, Miami, Florida, 33131, and SAM DANIELS, ESQUIRE, 1414 DuPont Building, Miami, Florida, 33131, this _____ day of August, 1967.

SAMUEL SHERADSKY